

The City of Seattle

[Enter Name of Department]

CONSULTANT AGREEMENT FOR

[Insert brief, descriptive title for the consultant service]

AGREEMENT NO. _____

This Agreement is made and entered into by and between The City of Seattle ("the City"), a Washington municipal corporation, through its **[*insert name of City department or agency]**, as represented by **[insert job title of head of department or agency]**; and **[insert name and address of Consultant]**, a **[insert appropriate type of business: e.g., partnership, sole proprietorship, limited liability company, corporation of the State of (*insert state in which the corporation is chartered)]** and authorized to do business in the State of Washington].

Section 1: TERM OF AGREEMENT

The term of this Agreement shall begin when fully executed by all parties, and shall end on _____, 200__, unless terminated earlier pursuant to the provisions hereof.

Section 2: TIME OF BEGINNING AND COMPLETION

The Consultant shall begin the work outlined in the "Scope of Work" section ("the Work") upon receipt of written notice to proceed from the City. The City will acknowledge in writing when the Work is complete.

Time limits established pursuant to this Agreement shall not be extended because of delays for which the Consultant is responsible, but may be extended by the City, in writing, for its convenience or for conditions beyond the Consultant's control.

Section 3: SCOPE OF WORK

In developing a scope of work, a relationship should be established between the SCOPE OF WORK in this section, including work tasks and deliverables, and the PAYMENT section, including dollar amounts, associated fees, charges, and reimbursable costs.

The provisions of the SCOPE OF WORK may be located either within this section, or as an attachment to the Agreement. Select one of the two options below and delete the other. The standard Scope of Work provision below must also be included in this section.

[Option No. 1] The Scope of Work of this Agreement and the time schedule for completion of such work is as follows: **[Insert Scope of Work within this Section]**

[Option No. 2] The Scope of Work of this Agreement and the time schedule for completion of such work is as described in Exhibit _____, which is attached to and made a part of this Agreement.

The Work shall, at all times, be subject to the City's general review and approval. The Consultant shall confer with the City periodically during the progress of the Work, and shall prepare and present such information and materials (e.g., a detailed outline of completed Work) as may be pertinent, necessary, or requested by the City to determine the adequacy of the Work or the Consultant's progress.

Agreement No. _____

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Section 4: PAYMENT

The Consultant will be reimbursed at a rate of _____. Total compensation under this Agreement shall not exceed _____. The parties agree that the hourly rate includes all direct, indirect, and overhead costs incurred by the Consultant in performance of the Work.

Payments under contracts negotiated on the basis of cost shall include only those costs allowed under Part 31 of the Federal Acquisition Regulations (FAR), the provisions of which are incorporated herein by reference.

Section 5: PAYMENT PROCEDURES

Payment shall be made by the City to the Consultant upon the City's receipt of an invoice itemizing the number of hours worked and itemizing the Work elements performed for the period covered by the invoice.

Section 6: ADDRESSES FOR NOTICES AND DELIVERABLE MATERIALS

All official notices under this Agreement shall be delivered to the following addresses (or such other address(es) as either party may designate in writing):

If to City: **[Insert Project Manager's name, title, address, phone number]**

If to the Consultant: **[Insert Project Manager's name, title, address, phone number]**

Section 7: FINAL CONSULTANT CONTRACT PAYMENTS REPORTING REQUIREMENTS

Within 30 calendar days after final payment has been made to the Consultant for the Work, the Consultant shall submit to the City a completed "Final Consultant Contract Payments Reporting Form," in the form attached to this Agreement or as revised hereafter by the City.

Section 8: EQUAL EMPLOYMENT OPPORTUNITY AND OUTREACH

- A. The Consultant shall not discriminate against any employee or applicant for employment because of race, religion, creed, age, color, sex, marital status, sexual orientation, gender identity, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification. The Consultant shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their creed, religion, race, age, color, sex, national origin, marital status, political ideology, ancestry, sexual orientation, gender identity, or the presence of any sensory, mental or physical handicap. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising, layoff or termination, rates of pay, or other forms of compensation and selection for training, including apprenticeship. The Consultant shall post in conspicuous places, available to employees and applicants for employment, notices as provided by the City setting forth the provisions of this nondiscrimination clause.
- B. The Consultant shall furnish to the Director of Executive Administration (or his/her designee), upon request and on such form as may be provided therefor, a report of the affirmative action taken by the Consultant in implementing the requirements of this section, and will permit access to the Consultant's records of employment, employment advertisements, application forms, other pertinent data and records requested by the Director of Executive Administration for the purposes of investigation to determine compliance with the requirements of this section.

- C. If, upon investigation, the Director of Executive Administration finds probable cause to believe that the Consultant has failed to comply with any of the requirements of this section, the Consultant shall be so notified in writing. The Director of Executive Administration shall give the Consultant an opportunity to be heard, after ten calendar days' notice. If, after the Consultant's opportunity to be heard, the Director of Executive Administration still finds probable cause, he/she may suspend the Agreement and/or withhold any funds due or to become due to the Consultant, pending compliance by the Consultant with the requirements of this section.
- D. The City encourages the use of women and minority employees and apprentices on all City contracts and encourages outreach efforts in employment opportunities. Outreach efforts may include use of targeted solicitation lists, advertisements in publications directed to underrepresented communities, providing student internships or apprentice opportunities, noting the Consultant's Equal Employment Opportunity (EEO) policy in solicitations, emphasizing EEO and outreach policies within the company, and using the services of available minority community and public organizations to perform outreach.
- E. Upon request by the Department of Executive Administration, the Consultant shall submit EEO Reports in the form specified by the City, detailing actual employment data for the Consultant and for any and all subcontractor(s) utilized for the Work.
- F. The Consultant, by executing this Agreement, is affirming that the Consultant complies with all applicable federal, state, and local non-discrimination laws, particularly the requirements of SMC Ch. 20.44 as incorporated in this Agreement. Any violation of the mandatory requirements of the provisions of this section shall be a material breach of Agreement for which the Consultant may be subject to damages and sanctions provided for by the Agreement and by applicable law.
- G. The foregoing provisions of this section shall be inserted in all subcontracts for the Work covered by this Agreement.

Section 9: NONDISCRIMINATION IN EMPLOYEE BENEFITS

These sections apply to all consultant contracts estimated to cost \$38,000 or more. This section should be deleted for any contract estimated to cost less than \$38,000 and the word "Reserved" typed in place of the Section title above ["Section 9: Reserved"] Refer to Section 6.90.040 of the City's General Rules for Consultant Contracting for guidance regarding these provisions.

- A. The Consultant shall comply with the requirements of SMC Ch. 20.45 that obligate the Consultant to make the same or equivalent benefits ("equal benefits") available to its employees with domestic partners as the Consultant makes available to its employees with spouses. At the City's request, the Consultant shall provide complete information and verification of the Consultant's compliance with SMC Ch. 20.45. The equal benefit provisions of SMC Ch. 20.45 do not apply to subcontractors used under this Agreement.
- B. Any violation by the Consultant of the provisions of SMC Ch. 20.45 shall be a material breach of the Agreement, for which the Consultant shall be subject to the remedies thereunder, including but not limited to payment of liquidated damages in the amount of \$___ for each calendar day the Consultant is in violation of SMC Ch. 20.45 during the term of the Agreement, termination of the Agreement, disqualification of the Consultant from bidding on or being awarded a City contract for a period of up to five (5) years, and/or other remedies specifically provided for in SMC Ch. 20.45 and the Equal Benefits Program Rules promulgated thereunder.

Section 10: EFFORTS TO USE WOMEN AND MINORITY BUSINESS ENTERPRISES

- A. General: The City encourages the use of Women and Minority Business Enterprises ("WMBEs") as subconsultants and women and minority employees in all City contracts, and encourages

outreach efforts to include women and minorities in employment, contracting, and subcontracting opportunities.

Outreach efforts may include the use of solicitation lists, advertisements in publications directed to minority communities, breaking down total requirements into smaller tasks or quantities where economically feasible, making other useful schedule or requirements modifications that are likely to assist small or WMBE businesses to compete, targeted recruitment efforts, and using the services of available minority community and public organizations to perform outreach.

The Consultant shall ensure that all employees, particularly supervisors, are aware of, and adhere to their obligation to maintain a working environment free from discriminatory conduct, including but not limited to harassment and intimidation of minorities, women, or WMBE businesses.

- B. Non-Discrimination: The Consultant shall not create barriers to open and fair opportunities for WMBEs to participate in any City contract and to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction and services.
- C. Record-Keeping: The Consultant shall maintain, for at least 12 months after the expiration or earlier termination of this Agreement, relevant records and information necessary to document all Consultant solicitations to subconsultants and suppliers, all subconsultant and supplier proposals received, and all subconsultants and suppliers actually utilized under this Agreement. The City shall have the right to inspect and copy such records.
- D. Sanctions for Violation: Any violation of the mandatory requirements of the provisions of this section (sub-sections B and C) shall be a material breach of contract for which the Consultant may be subject to damages and sanctions provided for by the Agreement and by applicable law.

Section 11: OTHER LEGAL REQUIREMENTS

- A. General Requirement: The Consultant, at no expense to the City, shall comply with all applicable laws of the United States and the State of Washington; the Charter and ordinances of The City of Seattle; and rules, regulations, orders, and directives of their administrative agencies and the officers thereof. Without limiting the generality of this paragraph, the Consultant shall specifically comply with the following requirements of this section.
- B. Licenses and Similar Authorizations: The Consultant, at no expense to the City, shall secure and maintain in full force and effect during the term of this Agreement all required licenses, permits, and similar legal authorizations, and comply with all requirements thereof.
- C. Use of Recycled Content Paper: The Consultant shall use, whenever practicable, recycled content paper on all documents submitted to the City, in accordance with SMC 3.38.904.
- D. Americans with Disabilities Act: The Consultant shall comply with all applicable provisions of the Americans with Disabilities Act of 1990 (ADA) in performing its obligations under this Agreement. Failure to comply with the provisions of the ADA shall be a material breach of, and grounds for the immediate termination of, this Agreement.
- E. Fair Contracting Practices Ordinance: The Consultant shall comply with the Fair Contracting Practices Ordinance of The City of Seattle (Chapter 14.10 SMC), as amended. Conduct made unlawful by that ordinance constitutes a breach of contract. Engaging in an unfair contracting practice may also result in the imposition of a civil fine or forfeiture under the Seattle Criminal Code as well as various civil remedies.

Section 12: INDEMNIFICATION

The Consultant does hereby release and shall defend, indemnify, and hold the City and its employees and agents harmless from all losses, liabilities, claims (including claims arising under federal, state or local environmental laws), costs (including attorneys' fees), actions or damages of any sort whatsoever arising out of the Consultant's performance of the services contemplated by this Agreement to the extent attributable to the negligent acts or omissions, willful misconduct or breach of this Agreement by the Consultant, its servants, agents, and employees. In furtherance of these obligations, and only with respect to the City, its employees and agents, the Consultant waives any immunity it may have or limitation on the amount or type of damages imposed under any industrial insurance, worker's compensation, disability, employee benefit or similar laws. The Consultant acknowledges that the foregoing waiver of immunity was mutually negotiated and agrees that the indemnification provided for in this section shall survive any termination or expiration of this Agreement.

Section 13: INSURANCE

☐ **No insurance certification is required.** However, Consultant agrees that it will maintain premises and vehicle liability insurance in force with coverages and limits of liability that would generally be maintained by similarly situated consultants and workers compensation insurance as may be required by Washington State statutes.

☐ **Insurance certification required.** See Addendum "INSURANCE REQUIREMENTS AND TRANSMITTAL FORM."

Section 14: AUDIT

Upon request, the Consultant shall permit the City, and any other governmental agency involved in the funding of the Work ("Agency"), to inspect and audit all pertinent books and records of the Consultant, any subconsultant, or any other person or entity that performed work in connection with or related to the Work, at any and all times deemed necessary by the City or Agency, including up to six years after the final payment or release of withheld amounts has been made under this Agreement. Such inspection and audit shall occur in King County, Washington or other such reasonable location as the City or Agency selects. The Consultant shall supply the City with, or shall permit the City and/or Agency to make, a copy of any books and records and any portion thereof. The Consultant shall ensure that such inspection, audit and copying right of the City and Agency is a condition of any subcontract, agreement or other arrangement under which any other person or entity is permitted to perform work under this Agreement.

Section 15: CONTRACTUAL RELATIONSHIP

The relationship of the Consultant to the City by reason of this Agreement shall be that of an independent contractor. This Agreement does not authorize the Consultant to act as the agent or legal representative of the City for any purpose whatsoever. The Consultant is not granted any express or implied right or authority to assume or create any obligation or responsibility on behalf of or in the name of the City or to bind the City in any manner or thing whatsoever.

Section 16: ASSIGNMENT AND SUBCONTRACTING

The Consultant shall not assign or subcontract any of its obligations under this Agreement without the City's written consent, which may be granted or withheld in the City's sole discretion. Any subcontract made by the Consultant shall incorporate by reference all the terms of this Agreement. The Consultant shall ensure that all subconsultants comply with the obligations and requirements of the subcontract. The City's consent to any assignment or subcontract shall not release the Consultant from liability under this Agreement, or from any obligation to be performed under this Agreement, whether occurring before or after such consent, assignment, or subcontract.

Section 17: INVOLVEMENT OF FORMER CITY EMPLOYEES

- A. The Consultant shall promptly notify the City in writing of any person who is expected to perform any of the Work and who, during the twelve (12) months immediately prior to the expected commencement date of such work or subcontract, was a City officer or employee.
- B. The Consultant shall ensure that no Work or matter related to the Work is performed by any person (employee, subcontractor, or otherwise) who:
 - (1) was a City officer or employee within the past twelve (12) months; and
 - (2) as such was officially involved in, participated in, or acted upon any matter related to the Work, or is otherwise prohibited from such performance by SMC 4.16.075.

Section 18: NO CONFLICT OF INTEREST

The Consultant confirms that the Consultant does not have a business interest or a close family relationship with any City officer or employee who was, is, or will be involved in the consultant selection, negotiation, drafting, signing, administration, or evaluating the Consultant's performance. As used in this section, the term "Consultant" shall include any employee of the Consultant who was, is, or will be involved in the negotiation, drafting, signing, administration, or performance of the Agreement. As used in this section, the term "close family relationship" refers to the following: spouse or domestic partner; any dependent parent, parent-in-law, child, son-in-law, or daughter-in-law; or any parent, parent-in-law, sibling, uncle, aunt, cousin, niece or nephew residing in the household of a City officer or employee described above.

Section 19: ERRORS & OMISSIONS; CORRECTION

The Consultant shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished by or on the behalf of the Consultant under this Agreement. The Consultant, without additional compensation, shall correct or revise any errors or omissions in the designs, drawings, specifications, and/or other Consultant services immediately upon notification by the City. The obligation provided for in this section with respect to any acts or omissions during the term of this Agreement shall survive any termination or expiration of this Agreement.

Section 20: INTELLECTUAL PROPERTY RIGHTS

The Consultant hereby assigns to the City all rights in any invention, improvement, or discovery, together with all related information, including but not limited to, designs, specifications, data, patent rights and findings developed in connection with the performance of the Agreement or any subcontract hereunder. Notwithstanding the above, the Consultant does not convey to the City, nor does the City obtain, any right to any document or material utilized by Consultant that was created or produced separate from this Agreement or was preexisting material (not already owned by the City), provided that the Consultant has clearly identified in writing such material as preexisting prior to commencement of the Work. To the extent that preexisting materials are incorporated into the Work, the Consultant grants the City an irrevocable, non-exclusive right and/or license to use, execute, reproduce, display, and transfer the preexisting material, but only as an inseparable part of the Work.

All materials and documents prepared by the Consultant in connection with the Work are instruments of service and the Consultant shall retain the copyright (including the right of reuse) whether or not the Work is completed. The Consultant grants to the City a non-exclusive, irrevocable, unlimited, royalty-free license to use every document and all other materials prepared by the Consultant for the City under this Agreement. If requested by the City, a copy of all drawing, prints, plans, field notes, reports, documents, files, input materials, output materials, the media upon which they are located (including cards, tapes, discs and other storage facilities), software programs or packages (including source code or codes, object codes, upgrades, revisions, modifications, and any related materials) and/or any other related documents

or materials which are developed solely for, and paid for by, the City in connection with the performance of the Work, shall be promptly delivered to the City.

The City may make and retain copies of such documents for its information and reference in connection with their use on the project. The Consultant does not represent or warrant that such documents are suitable for reuse by the City, or others, on extensions of the project, or on any other project.

Section 21: CONFIDENTIALITY

The parties agree that they will not permit the duplication or disclosure of any information designated in advance by the other party as "Confidential and Proprietary" to any person (other than its own employee, agent, or representative who must have such information for the performance of that party's obligations hereunder) unless such duplication, use or disclosure is specifically authorized in writing by the other party or is required by law. "Confidential and Proprietary" information does not include ideas, concepts, know-how or techniques related to information that, at the time of disclosure, is in the public domain unless the entry of that information into the public domain is a result of any breach of this Agreement. Likewise, "Confidential and Proprietary" information does not apply to information that is independently developed, already possessed without obligation of confidentiality, or rightfully obtained from a third party without an obligation of confidentiality.

Section 22: EXTRA WORK

The City may desire to have the Consultant perform work or render services in connection with this project other than that expressly provided for in the "Scope of Work" section of this Agreement. This will be considered extra work, supplemental to this Agreement, and shall not proceed unless authorized by an amendment. Any costs incurred due to the performance of extra work prior to execution of an amendment will not be reimbursed under this Agreement or an amendment.

Section 23: KEY PERSONS

The Consultant shall not transfer or reassign any individual designated in this Agreement as essential to the Work, without the express written consent of the City, which consent shall not be unreasonably withheld. If, during the term of this Agreement, any such individual leaves the Consultant's employment, the Consultant shall present to the City one or more individual(s) with greater or equal qualifications as a replacement, subject to the City's approval, which shall not be unreasonably withheld. The City's approval shall not be construed to release the Consultant from its obligations under this Agreement.

Section 24: DISPUTES

Any dispute or misunderstanding that may arise under this Agreement concerning the Consultant's performance shall first be resolved through amicable negotiations, if possible, between the Consultant's Project Manager and the City's Project Manager, or if necessary shall be referred to the Director of Executive Administration and the Consultant's senior executive(s). If such officials do not agree upon a decision within a reasonable period of time, the parties may pursue other legal means to resolve such disputes, including but not limited to alternate dispute resolution processes.

Section 25: TERMINATION

- A. For Cause: The City may terminate this Agreement if the Consultant is in material breach of any of the terms of this Agreement, and such breach has not been corrected to the City's reasonable satisfaction in a timely manner.
- B. For Reasons Beyond Control of Parties: Either party may terminate this Agreement without recourse by the other where performance is rendered impossible or impracticable for reasons

beyond such party's reasonable control such as but not limited to an act of nature; war or warlike operation; civil commotion; riot; labor dispute including strike, walkout, or lockout; sabotage; or superior governmental regulation or control.

- C. For City's Convenience: The City may terminate this Agreement at any time, without cause and for any reason including the City's convenience, upon written notice to the Consultant.
- D. Notice: Notice of termination pursuant to this section shall be given by the party terminating this Agreement to the other not less than five (5) business days prior to the effective date of termination.
- E. Actions Upon Termination: In the event of termination not the fault of the Consultant, the Consultant shall be paid for the services properly performed prior to termination, together with any reimbursable expenses then due, but in no event shall such compensation exceed the maximum compensation to be paid under the Agreement. The Consultant agrees that this payment shall fully and adequately compensate the Consultant and all subconsultants for all profits, costs, expenses, losses, liabilities, damages, taxes, and charges of any kind whatsoever (whether foreseen or unforeseen) attributable to the termination of this Agreement.

Upon termination for any reason, the Consultant shall provide the City with the most current design documents, contract documents, writings and other product it has completed to the date of termination, along with copies of all project-related correspondence and similar items. The City shall have the same rights to use these materials as if termination had not occurred; provided, however, that the City shall indemnify and hold the Consultant harmless from any claims, losses or damages to the extent caused by modifications made by the City to the Consultant's work product.

Section 26: MISCELLANEOUS PROVISIONS

- A. Amendments: No modification of this Agreement shall be effective unless in writing and signed by an authorized representative of each of the parties hereto.
- B. Binding Agreement: This Agreement shall not be binding until signed by both parties. The provisions, covenants and conditions in this Agreement shall bind the parties, their legal heirs, representatives, successors, and assigns.
- C. Applicable Law/Venue: This Agreement shall be construed and interpreted in accordance with the laws of the State of Washington. The venue of any action brought hereunder shall be in the Superior Court for King County.
- D. Remedies Cumulative: Rights under this Agreement are cumulative and nonexclusive of any other remedy at law or in equity.
- E. Captions: The titles of sections are for convenience only and do not define or limit the contents.
- F. Severability: If any term or provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
- G. Waiver: No covenant, term or condition or the breach thereof shall be deemed waived, except by written consent of the party against whom the waiver is claimed, and any waiver of the breach of any covenant, term or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term or condition. Neither the acceptance

by the City of any performance by the Consultant after the time the same shall have become due nor payment to the Consultant for any portion of the Work shall constitute a waiver by the City of the breach or default of any covenant, term or condition unless otherwise expressly agreed to by the City, in writing.

- H. Entire Agreement: This document, along with any exhibits and attachments, constitutes the entire agreement between the parties with respect to the Work. No verbal agreement or conversation between any officer, agent, associate or employee of the City and any officer, agency, employee or associate of the Consultant prior to the execution of this Agreement shall affect or modify any of the terms or obligations contained in this Agreement.
- I. Negotiated Agreement: The parties acknowledge that this is a negotiated agreement, that they have had the opportunity to have this Agreement reviewed by their respective legal counsel, and that the terms and conditions of this Agreement are not to be construed against any party on the basis of such party's draftsmanship thereof.

IN WITNESS WHEREOF, in consideration of the terms, conditions, and covenants contained herein, or attached and incorporated and made a part hereof, the parties have executed this Agreement by having their representatives affix their signatures below.

CONSULTANT

THE CITY OF SEATTLE

By _____
Signature Date

By _____
Signature Date

Title

Title

City of Seattle Business License Number:

Washington State Unified Business Identifier Number (UBI):

Federal Tax ID Number:

Attachment: *Final Consultant Contract Payments Reporting form*